Opinion #1129

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

TAX DIVISION

DISTRICT OF COLUMBIA REDEVELOPMENT LAND AGENCY and BRESLER & REINER, INC.,	)	
Petitioners	)	
v.	)	Docket No. 2288
DISTRICT OF COLUMBIA,	)	
Respondent	)	

MEMORANDUM ORDER AND TRIAL FINDINGS

Petitioners, District of Columbia Redevelopment Land Agency (DCRLA), and Bresler & Reiner, Inc., appeal from real property tax assessments for Fiscal Year 1975. The Court has jurisdiction pursuant to D. C. Code 1973, §§11-1201, 47-2403, 47-2405.

I

The petitioners appeal from the assessment made against land and improvements located at 1001 - 1101 Third Street, Southwest in the District of Columbia; the legal description being Square 542, Lot 79. The following facts were stipulated: DCRLA is the owner of the land and the land is leased to Bresler for 99 years. The property consists of land and improvements; the improvements being apartment houses. Bresler is a corporation organized under the law of the District of Columbia with its principal office at 401 M Street, Southwest in the District of Columbia. Bresler is the lessee of the

property and is obligated to pay all real property taxes under the lease which expires June 30, 2058. That lease was originally entered into by Webb & Knapp, Inc., a District of Columbia corporation, on June 21, 1959. The total taxes in controversy for Fiscal Year 1975 are $69,387.97. The first half taxes were paid on December 4, 1974, and the second half taxes on March 31, 1975. The petitioners filed a petition with the Board of Equalization and Review and the Court finds that the petition was timely filed with that Board.[1/] The Board upheld the assessment as determined by the Assessor and petitioners appealed to this court. The subject property contains 135,263 square feet.[2/] Bresler pays an annual ground rent, under the lease, in the amount of $20,285.39.

Respondent had assessed the property at $1,239,245.40 for the land, and $2,560,752.70 for the improvements for a

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1/ Respondent did not stipulate that the petition before the Board was timely, however, its counsel advised the court that it was not contesting that fact. The Court treats this issue as having been conceded by respondent and accordingly, has found that the filing of the petition with the Board was timely.

2/ The parties were unable to stipulate as to the number of square feet since respondents' papers indicated that the square footage was 134,263. Mr. Charles Bresler testified that there was a subsequent amendment to the lease which added 1,000 square feet making the total 135,263 (actually 135,262.60 before being rounded off) square feet.

total assessment of $3,799,998.10. Petitioners had originally requested a reduction to $338,156.40 for the land and $1,890,093.60 for the improvements (Petition, prayer par. 1) However, they filed an Amended Petition on April 19, 1976, requesting a reduction for a total of $1,935,700.00 as the correct value for both land and improvements consisting of $270,472.00 for the land and $1,665,205.00 for the improvements (Amended Petition, prayer par. 1).[3/]

The trial in this case was held on April 19 and 20, 1976. The petitioners called two witnesses, namely, Charles Bresler and its expert, Curt C. Mack. Petitioners' expert testified that the fair market value of the property as of January 1, 1974, and July 1, 1974, was $1,935,700. The respondent called one witness, its expert, Peter A. Moholt, who testified that in his opinion the fair market value of the property as of July 1, 1974, was $2,453,500. Later, however, the Court ruled that certain properties relied on by respondent's expert were not comparable and therefore had no probative value and refused to receive them into evidence. Subsequent to that

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3/ While the Amended Petition was only filed on April 19, 1976, a Motion to Amend the Petition to Conform to the Evidence was originally filed on March 4, 1976. Respondent filed no opposition to the motion. There is a slight difference in the Amended Petition attached to the motion and the Amended Petition actually filed on April 19, however, the change is not prejudicial to the respondent and the respondent has not objected to its filing. The Court did not require the respondent to file a written answer to the Amended Petition due to the late date of the amendment.

ruling, the respondent's expert, utilizing the same formula he had used to determine the above value, computed a fair market value far less than that determined by the petitioners. 4/ (See Part II, infra.)

II

The subject is located in the Southwest, more specifically, the eastern part of the redeveloped Southwest area of the District. It is bounded on the west by the Waterside Mall (retail and offices) and on the east and south by Public Housing units. It appears that the area has been subjected to a high rate of vandalism; for example, the glass breakage replacement costs on the subject property in 1973 was allegedly in excess of $1,000 a month. Petitioners' expert also noted that the rent charged was less than those apartments located farther west and that the property had an 11.33 percent vacancy rate which is higher than many of the other properties in the Southwest.

Both experts utilized the so-called income method in determining the fair market value of the property and both agree that the use of the property amounted to its highest

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4/ Although respondent's expert computed the lower value, he testified that in his opinion the value was not accurate and that it did not constitute his opinion as to the fair market value of the subject property.

and best use.[5/] The basic difference between the values determined by the respective experts was the fact that while both experts made adjustments for expenses, respondent's expert made far more drastic adjustments based upon his comparison of certain expenses attributed to the subject property with similar expense items and properties he felt were comparable. The primary items adjusted by respondent's expert were payroll, fuel, electricity and maintenance and repairs. He also made adjustments for income.

In reaching his opinion as to value, the respondent's expert made adjustments for income so as to increase the amount of income which should have been received on the subject property by stablizing the vacancy and rent loss. He made this decision after comparing the subject property with five comparable properties located in Northwest Washington and with the Town Center West Building which is located at the opposite end of Waterside Mall, the latter being the only Southwest property utilized in making the adjustment. "Whether or not the sales used by a party to establish value are comparable to the subject property is a factual issue" which the Court must determine. "Where sales are not comparable

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5/ It is the highest and best use rather than the actual use which controls. District of Columbia v. Burlington Apartment House Co., No. 7986 (D.C. App. decided January 29, 1976) at Slip Op. 9.

they are irrelevant to the proceedings and hence inadmissible." District of Columbia v. Burlington Apartment House Co., No. 7986 (D.C. App. decided January 29, 1976) at Slip Op. 10. See also District of Columbia Redevelopment Land Agency v. 13 Parcels of Land, No. 74-1644 (C.A. D.C. decided February 23, 1976) at Slip Op. 6; District of Columbia Redevelopment Land Agency v. 61 Parcels of Land, 98 U.S. App. D.C. 367, 368, 235 F.2d 864, 865 (1956). The same rule applies when an attempt is made to use "comparable" properties in order to compare income and expenses. Based upon those decisions, the Court directed respondent and its expert to make a preliminary showing that the five northwest properties were comparable. The expert testified that the property consisted of land and apartment buildings all nine or ten stories in height. No other evidence on comparability was offered except the expert's opinion that they were comparable.

In the opinion of this Court the above proffer fails to support a finding of comparability and absent such a finding the evidence offered is inadmissible. The respondent furnished no further evidence of comparability with respect to the properties relied upon by respondent's expert in adjusting income. The burden to show comparability falls upon the party submitting that evidence; since respondent failed to make any further showing, the evidence was held inadmissible.

Respondent's expert next attempted to demonstrate that the expenses attributed to the subject property were too high and relied upon a second set of alleged comparable properties in making that adjustment. For reasons not made clear to the Court, the expert used different properties as comparables when adjusting expenses than those used in adjusting income.

Respondent's expert attempted to demonstrate that the Northwest properties he used for comparison purposes were in fact comparable. At this point, it must be borne in mind, that the expense adjustments were made to four principal items, namely, payroll, fuel, electric, and maintenance and repairs. This Court also rejected those properties as comparable, based upon the decisions cited above, for the following reasons: (1) The subject property is in the Southwest while the "comparable" properties are all in the Northwest. (2) The subject property has four sides fully exposed to the elements and every floor has floor to ceiling windows while four of the "comparable" properties have only two sides exposed to the elements - a factor which has considerable impact on the cost for fuel and electricity. (3) The subject property is in an area where there has been a high rate of vandalism while there was no evidence that the same was true for the five "comparable" properties. The cost of glass breakage for the subject property is a case in point; that being reflected in the cost for maintenance and

repairs. (4) It appears that the subject property employed more people for services, security and maintenance than the "comparable" properties. The larger security force was justified by the high crime rate. (5) The grounds surrounding the subject property were larger than those surrounding at least four of the "comparable" properties. Other differences were noted but the above were the most significant.

These differences, make it clear that the alleged "comparable" properties in Northwest Washington were not comparable and have no probitive value in the Court's attempt to determine whether the costs attributed to the subject property were fair and reasonable. Comparable properties must be a fair yardstick upon which to base a judgment of the subject property - such is not the case here.

In order to determine comparability it is unnecessary to have identical properties. However, it is clear that all apartment houses of the same height or size are not comparable. Moreover, in the instant case, the expert had a far better yardstick for testing the income and expenses of the subject property, he could have looked to properties in the Southwest and located near and around the subject property. 6/

6/ It is far easier to find comparability for income and expense purposes than for sale purposes since there may not have been a sale of local property within a reasonable time of the sale of the subject property.

The Court did rule that the Town Center West property was comparable, however, the respondent's expert testified that he felt he could not rely upon that property alone. After the Court had made its ruling, respondent's expert computed the value of the subject property to be less than that found by petitioners' expert. 7/

III

The respondent offered no other evidence to support the assessment made for 1975. The law is clear that it is unnecessary for the petitioners to show that respondent's "assessment of the property resulted from fraud, illegality or, at the very least, that it was arbitrary and inequitable". Rather, the standard of review is "whether the property has been assessed in accordance with the statute, i.e., at 'the full and true value thereof in lawful money'. D. C. Code 1973, §47-713". District of Columbia v. Burlington Apartment House Co., supra. Slip Op. 8, n. 15. Since the respondent offered no evidence which would uphold the assessment made in this case, this Court concludes that the fair market value of the property is as prayed by the petitioners, that is that the fair market value is $1,935,700 consisting

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7/ Respondent never offered the expert's report (Resp. Ex. 1) into evidence.

of $270,472 for the land and $1,665,205 for the improvements.

ORDER

It is hereby

ORDERED that the petitioners shall submit a proposed Order in five days consistent with these findings and this order. Petitioners shall submit the Order to counsel for the respondent who will have an additional five days in which to submit any objections to the form of the Order. Interest shall be paid from the date of payment of the assessment pursuant to this Court's Opinion in District of Columbia Redevelopment Land Agency v. District of Columbia, No. 2290 (Super. Ct. decided April 14, 1976). Should respondent not file objections thereto within five days, the Order will be signed as presented by the petitioners.

Dated: April 30, 1976

JOHN GARRETT PENN
Judge

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